

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	CASE NO. 8:06CR131
)	
Plaintiff,)	
)	
vs.)	TENTATIVE FINDINGS
)	
ALBERT L. CLARK,)	
)	
Defendant.)	

The Court has received the Presentence Investigation Report ("PSR") and the Defendant's objections thereto (Filing Nos. 43, 44). See "Order on Sentencing Schedule," ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 2005 WL 50108 (U.S. Jan. 12, 2005), the sentencing guidelines are advisory.

The plea agreement reached pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B) provides that "the most readily provable amount of cocaine base for which the Defendant should be held accountable is 26.8 grams." (Filing No. 37, ¶ 11.) This drug amount would result in a base offense level of 28. The PSR assumes a base offense level of 32 based on 75.56 grams of cocaine base reached by conversion of the cash found on the Defendant and his person. The Court's tentative findings are that, absent unusual circumstances, the plea agreement should be upheld and the base offense level should be calculated as level 28.

IT IS ORDERED:

1. The Court's tentative findings are that the Defendant's objections (Filing Nos. 43, 44) to the PSR are granted;

2. The parties are notified that my tentative findings are that the PSR is correct in all other respects;

3. If **any** party wishes to challenge these tentative findings, the party shall file, as soon as possible but in any event before sentencing, and serve upon opposing counsel and the court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

4. Absent submission of the information required by paragraph 3 of this order, my tentative findings may become final;

5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 9th day of January, 2007.

BY THE COURT:

S/ Laurie Smith Camp
United States District Judge